

Fairfax County Stormwater Management Ordinance

Small Group Work Session #1

September 24, 2012

MEETING NOTES

Single Family Home Exemptions/Infill Development – Team #1

- The Code of Virginia (§ 10.1-603.8.C.3) gives Fairfax County the option of exempting single-family detached dwellings (including additions and modifications) that disturb between 2,500 SF and one acre.
- Infill development can affect water quality and flooding both locally and watershed-wide. The Code of Virginia (§ 10.1-603.7. A) provides the County broad latitude to go above state minimum standards to address these types of situations provided that certain findings are made.

Exemption Considerations

- Consider appropriate zoning density with regard to infill development; existing ordinances may already address this.
- Consider the size of the single family dwelling or the addition.
- Consider the status of existing inadequate infrastructure; consider if there is an existing stormwater issue.
- In addition to the size of the structure, also consider the total impervious area of the project.
- Establish a committee to review “appeals” or applications for exemptions – similar to the Chesapeake Bay Preservation Ordinance Exception Review Committee.
- Consider the infiltration capacity of the soils. Some solutions will work in varying areas but the same solution will not work in all parts of Fairfax County.
- More tools are needed to comply if exemptions are not allowed; use tools from the Department of Conservation and Recreation (DCR).
- Consider waivers with lower thresholds.
- Exceptions to exemptions are needed when flooding is an existing issue and there is a need to reduce stormwater.
- Consider greater than 2,500 SF plus percentage of impervious.
- Consider lots in relation to the larger landscape and watersheds to determine the cumulative impact of overall development.

Team #1 Summary

There was not agreement on the best approach to this issue, but two options were proposed by members of the group:

- Generally provide an exemption at 2,500 SF but provide for exceptions based on considerations and disturbed area.
- Make the exemption at 2,500 SF in the Resource Protection Area and allow 5,000 SF elsewhere, allowing for exceptions up to one acre.

Single Family Home Exemptions/Infill Development – Team #2

Exemption Advantages

The team identified the following *advantages* to maximizing the exemption:

- Makes it easier for the homeowner to comply.
- It costs thousands now to do an addition – new rules will only increase the cost.
- Maintenance problems for BMPs for homeowners; rain gardens and other techniques on single family lots often fail and the homeowner will be stuck with the cost.
- The new rules will be too onerous for a single family property.
- Design and construction issues/location.
- New rules are eroding property rights for homeowners.

Exemption Disadvantages

The team identified the following *disadvantages* to maximizing the exemption:

- Fairfax County loses control over stormwater – the smaller projects are also part of the problem.
- The situation in the County has changed – single family re-dos are the future; there are a lot of stormwater complaints now from homeowners.

Possible Exemption Criteria

The team generally agreed that there needs to be a balance between the competing advantages and disadvantages. The following potential criteria were identified:

- Small addition vs. McMansions – we should differentiate.
- Differentiate between patios, driveways, etc. for exemption.
- Need to consider surrounding properties.
- In some parts of Fairfax County, the repercussions of the exemption will mean different things – can we consider topography for exemption decision?
- Consider site-specific issues such as marine clays and shale.
- Mason, Annandale, and Tysons generally have no stormwater controls – we need something there.
- Consider slope in whether to grant exemptions; or would this be too complicated?
- Consider the footprint of the impervious cover compared to the size of the lot.

- Consider notifying neighbors if a waiver/exemption is being considered/granted.

Questions and Additional Comments

- Comment – How do we address incremental increases on a specific property over time? Footprint would be a good measure if a property is experiencing an incremental increase in impervious area over a long period of time through a number of smaller sized projects.
- Question – Does the County have information to assess local conditions to be able to grant exemptions?
- Question – Would exceptions make/create more restoration projects for Stormwater Planning?
- Question – Will the County be required to accept all BMP's in clearing house? A participant answered that the County can make a request to DCR to put on limits to certain BMPs.
- Question – Would the County be able to be consistent in our criteria? Consistency is important.
- Question – Can the County provide incentives, carrots for infill rather than mandates? For instance, rebates over a period of time.
- Comment – Combine recently passed Smart Development techniques as part of stormwater.
- Question – Small lot controls – how do you ensure they are working?
- Question – How do you ensure solutions are not causing problems (soil issues)?

Stormwater Facility Inspections by Owner

- 4VAC50-60-112 of the regulations require “submission of inspection and maintenance reports to the stormwater program administrative authority” by a facility owner to ensure proper operation and maintenance. This is different than, and beyond the requirement for the County to perform an independent compliance inspection at least once every five years.
- The requirement for submission of an inspection by the owner is to be set forth in an instrument recorded in the local land records. However, the regulations allows the County to come up with an alternative mechanism for enforcement for individual lot stormwater facilities provided that it is demonstrated to the satisfaction of the County that future maintenance will be addressed through an enforceable mechanism.

- A matrix should be developed to outline inspection needs including criteria such as:
 - Type of BMP
 - Inspector training requirements based on the type of BMP
 - HOA/non-HOA/commercial facility
 - Existing/new facility
 - How often will inspection and reporting be required

- The real estate process should be used to facilitate the transfer of information related to the legal and maintenance responsibility of the BMP and to educate new owners about their stormwater facility.
- Facilities should be marked or identified in some way. Perhaps small signage or plaques could be installed – this could also provide an outreach opportunity.
- Tactics for level of inspection will be based on the BMP type (bathymetric survey, sediment assessment for ponds, etc.).
- Enforcement and consequences need to be clearly defined.
- The infill/redevelopment process could be leveraged to require maintenance agreements for older facilities that do not currently have one. Also, it may help for the County to offer some sort of cost sharing program to get older facilities up to design standards.

Nutrient Credit Offsets/Impact on Pro-Rata Share Program

Nutrient Credit Offsets

- | |
|---|
| <ul style="list-style-type: none"> • The Code of Virginia (§ 10.1-603.8:1.D) <u>requires</u> Fairfax County to allow nutrient offset credits under certain enumerated circumstances. • The Code of Virginia (§ 10.1-603.8:1.B) <u>allows</u> Fairfax County to authorize the use of nutrient offset credits under other circumstances at its discretion and in accordance with the Code. • Offsets are not allowed to address quantity control issues. |
|---|
-
- Balance the impact to local water resources with cost efficiency and meeting County goals. Many local streams are not sensitive to nutrients, while the Occoquan and Potomac are sensitive.
 - Should the County's policy be watershed-specific?
 - How can the County incentivize keeping offsets locally? For example, reduce the coverage required to be eligible for automatic offsets from 75% to 50% if credits are kept in the County and/or other goals are met. Similar in structure to a voluntary TDR program.
 - County goals may include:
 - Revitalization areas
 - Tyson's Corner
 - Densification
 - How can the need for County tracking be minimized?
 - Consider specific watersheds and politics.
 - What degree of flexibility do developers have to "swap" between sites for credits? Can the County help to incentivize that kind of coordination?
 - How do we encourage close by banks such as the Occoquan down-zone area?
 - How do we incentivize micro-banks – that is, small banks created by development that has good soils and is willing to go above and beyond minimum requirements.

Pro-Rata Share

- The County's pro-rata share program is a supplemental funding source for providing off-site drainage improvements made necessary by land development. It addresses problems above and beyond what is handled through minimum code requirements.
- Watershed-based fees are charged according to the total estimated cost of drainage improvements and estimated percent impervious at ultimate build-out within a given watershed. The average fee is approximately \$11,500 per impervious acre.
- The new Runoff Reduction Method encourages pollutant reduction through infiltrating runoff into the soil, which has the potential to reduce downstream drainage problems.
- Any decrease in the pro-rata share program has the potential to increase the County's Stormwater Tax District, which is currently \$0.02 per \$100 of assessed real estate value.

- Pro-rata doesn't provide any incentive for going above and beyond minimum requirements.
- Need to do more projects faster.
- Take a look at how new regulations impact the final build-out of a watershed and how the watershed need to be managed. Adjust pro-rata accordingly.
- Consolidate the program; there are too many individual watersheds with individual rates.

Group Discussion

The following points and comments were made during the group discussion after the individual teams reported the results of their discussions.

Single Family Home Exemptions/Infill Development

- BMP Clearinghouse
 - The County does not allow all of the approved facility types but they can (and do) allow other innovative practices not included in the Clearinghouse.
- Manufactured devices could be the only option for single family homes if not exempted:
 - This will require a change to the PFM.
 - These facilities are not yet included in the Clearinghouse.
 - Devices require more advanced inspections and have additional safety issues such as confined space entry.
 - Adequate education needs to be provided when properties change hands. Otherwise, inspections and maintenance will become diluted as properties change hands.
 - What will properties do if there is no storm drain to tie into?
- It isn't possible to infiltrate everywhere or get adequate outfall.
- Need to look at the affordability of maintaining and repairing facilities that would be on single family lots.

- Enforcement is a key issue.
- To help with enforcement and long-term costs, owners could be required to purchase insurance for the repair to facilities.
- The County could act as an HOA and provide inspections/maintenance/repair/etc. The County would collect annual fees in the same way that an HOA would do.
- A lien on the property could interfere with getting a mortgage.
- Certification of the BMP's function could be done at sale similar to septic systems as part of the closing process.
- Where can homeowners get more information about BMPs?

Nutrient Credit Offsets/Impact on Pro-Rata Share Program

- Could credits be used better elsewhere?
- How important is it to keep nutrient reductions in Fairfax County? This varies by area of the County based on the MS4 permit and how the state decides to implement the Chesapeake Bay TMDL. This could be an issue in some parts of the County.
 - How are TMDLs related to the ordinance? How will it be revised?
 - Credit offsets are not facilitated by the County.
 - The language in the Code of Virginia states that the originating community gets the nutrient credit. Does EPA agree with this? What is the risk of encouraging offsets in the long-term?

Pro-Rata Share

- Consolidate watersheds; concerns about the 27 different areas and whether it divides the resources inefficiently.
- How is the money used? Are there specific types of projects? Is it only used for flooding projects or can it be used for stream erosion? County staff noted that funds have been used for stream restoration but are not used for sewer issues. Those would be coordinated with Wastewater Management.

Stormwater Facility Inspections by Owners

- In response to a question about safety, County staff stated that pond security fencing was considered but is not required as fencing was not shown to make facilities safer. The safety focus is on proper side slopes and benching and other design features.
- How fast is technology changing and is new data about BMP types available?
 - Allow for innovative technologies but respond to issues that arise.
 - Virginia Clearinghouse sets a procedure for new proprietary BMPs to be tested and accepted. The County can also make a case to DCR which technologies it wishes to accept or not accept.
 - Could look at requiring additional/tighter inspections for newer technologies.
- Facilities should convey with the property to show responsibility.
- Property owner education is important.
- Hard to keep up with maintenance on small facilities.
- Who is qualified to inspect facilities?
 - Need appropriate guidelines and checklists.
 - How will this be enforced? There are other similar guidelines in the County, such as for pool discharge, which are not followed.
 - There is more accountability for someone with a license performing inspections.
 - Inspections should be performed when properties are sold.
 - Underground facilities require a different level of inspection than a rain garden, etc.
 - Certification should be required that facilities were constructed properly.
 - What level of training is required will depend on the type of BMP.
 - A matrix should be developed based on the type of facility and the owner.
 - The issue is similar to alternative on-site septic systems. The Virginia Department of Health's Operations and Maintenance Manual for alternative septic systems could be a good model for facilities certified by operators.

Other Issues

- Need a focus on stormwater conservation (i.e. rain barrels, stormwater reuse).
- Embrace the complexity of the system and build a program to manage it.
- Climate change; which BMPs will take this into account?
- All building permits for single family and other homes and presumably the building code should require a substantial volume of stormwater to be retained onsite and not allowed to flow off one's property. This includes houses, driveways and other impervious surfaces.
- I believe the code for other structures should also have the same requirements.
- The county should embark on an aggressive tree and native plant strategy, especially on county properties, to help retain stormwater.